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Victoria Gewalt

7 UNITED STATES BANKRUPTCY COURT  
8 EASTERN DISTRICT OF CALIFORNIA  
9 SACRAMENTO DIVISION

10 In Re:	)	Case No.	21-20600-C-11
	)	DCN:	RLC-3
11 Victoria Gewalt,	)	Date:	March 24, 2021
	)	Time:	11:00 a.m.
12	)	Dept:	C
13 Debtor.	)	Courtroom:	35
	)	Judge.	Klein

14  
15 **MOTION TO APPROVE SALE OF REAL PROPERTY, COMPENSATION**  
16 **TO BROKER, AND WAIVER OF 14 DAY STAY PERIOD**  
17 **[11 U.S.C. §363(f)]**

18 Victoria Gewalt, the Chapter 11 debtor-in-possession in the above captioned case  
19 (“Gewalt”), hereby moves for an order approving the sale of real property of the estate  
20 commonly known as 490 Club Drive, Tahoe City, CA 96145, APN 083-340-016-000  
21 (“Property”) comprising a residence of approximately 1,176 square feet on an  
22 approximately 1/3<sup>rd</sup> acre lot pursuant to the terms of the Purchase and Sale Agreement  
23 dated February 28, 2021 and amended by Seller Multiple Counter Offer No. 1 dated  
24 March 2, 2021 and Buyer Counter Offer No. 1 executed by Victoria Gewalt on March  
25 3, 2021. True and correct copies are attached to the Exhibits filed in support of the  
26 present motion.

27 Debtor also requests an order approving compensation to the estate’s real estate  
28 broker, West Lake Properties at Tahoe (“Broker”) in the amount of \$41,300 (5% of the  
gross sale price), or the appropriate commission resulting from an overbid. A true and

1 correct copy of the Listing Agreement is attached to the Exhibits filed in support of the  
2 present motion. In addition, Debtor requests that the 14-day stay period imposed by  
3 Federal Rule of Bankruptcy Procedure 6004(h) be waived.

4 In support of the motion to sell the Debtor represents as follows:

5 1. This Court has jurisdiction over this proceeding pursuant to 11 U.S.C. §363  
6 and 28 U.S.C. §§157 and 1334 and Federal Rules of Bankruptcy Procedure, Rules  
7 6004 and 9014. This is a core proceeding pursuant to 28 U.S.C. §157(b).

8 2. Gewalt commenced this case as a voluntary Chapter 11 on February 22,  
9 2021.

10 3. Among the assets of this bankruptcy estate is Debtor's interest in the 490  
11 Club Drive property. Debtor had listed the Property prior to the filing of this case.  
12 After filing Debtor received multiple offers, she selected the offer submitted by Reema  
13 Bahnasy as the best offer. Gewalt is aware of two consensual liens secured by the  
14 property. A first priority Note secured by deed of trust held by Pacific Funding  
15 Solutions in the approximate amount of \$391,000 and a second priority Note secured  
16 by deed of trust held by Gulamali Faizullah in the approximate amount of \$205,000.  
17 The Faizullah Note is also secured by 801 and 807 Wheelock, Franklin Texas. Placer  
18 County property taxes in the approximate amount of \$5,541.20 are also owed. A  
19 Preliminary Title Report has been ordered but not yet received. Debtor anticipates  
20 filing a Supplement to the Exhibits when the Report is available.

21 4. The sale is where is, as is, without any warranty express or implied.

#### 22 **TERMS OF THE SALE AGREEMENT**

23 The proposed sale terms are \$826,000 cash less a credit not to exceed \$4,000  
24 for the rental income earned between March 10, 2021 and the escrow closing. Other  
25 than the credit for rental income there are no inspection or financial contingencies, and  
26 the Buyer hopes to close as soon as a Certified Copy of Court's Order Approving Sale  
27 is available and no later than March 29, 2021. Copies of the Purchase and Sale  
28 Agreement dated February 28, 2021 and amended by Seller Multiple Counter Offer

1 No. 1 dated March 2, 2021 and Buyer Counter Offer No. 1 executed by Victoria  
2 Gewalt on March 3, 2021 are attached to the Exhibits filed in support of the present  
3 motion.

#### 4 **PROPOSED OVERBID PROCEDURES**

5 Subject to Bankruptcy Court Approval, the Debtor requests approval of overbid  
6 procedures that require a proposed overbidder, prior to the hearing on this motion, to  
7 provide counsel for the Debtor a deposit by cashier's check in the amount of \$43,300  
8 (\$41,300 deposit and 1<sup>st</sup> overbid in the amount of \$1,000) and provide proof of funds  
9 for the balance of the purchase price. Any overbidding shall proceed in increments of  
10 at least \$2,000. In the event the overbidder is unable to complete the sale within 5  
11 days of the hearing the deposit shall be retained by the estate as liquidated damages.

#### 12 **BASIS FOR APPROVAL OF SALE**

13 Under Section 363(b)(1) of the Bankruptcy Code, a revested Debtor acting as  
14 Plan Administrator has the powers of a trustee and acting as trustee, may, after notice  
15 and hearing, use, sell or lease other than in the ordinary course of business, property of  
16 the estate. Approval of a transaction subject to Section 363 is within the sound  
17 discretion of the Court. In re Lionel Corp., 722 F. 2<sup>nd</sup> 1063, 1071 (2<sup>nd</sup> Cir. 1983); In re  
18 Baldwin-United Corp., 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984). In evaluating  
19 whether a transaction is based upon a sound business purpose the Court should  
20 consider all salient factors pertaining to the proceeding and act upon the diverse  
21 interests of the debtor and creditors. Here Gewalt with the assistance of an  
22 experienced local realtor has marketed the property. These marketing efforts resulted  
23 in three offers. After examining the offers Gewalt countered and accepted the offer  
24 being presented here. See Exhibits to Motion For Sale.

25 11 U.S.C. §363(f) provides for a sale free and clear of any interests. Section  
26 363(f) authorizes a sale where: (1) applicable nonbankruptcy law permits sale of such  
27 property free and clear of such interests: (2) such entity consents; (3) such interest is a  
28

1 lien and the price at which such property is to be sold is greater than the aggregate  
2 value of all liens of such property; (4) such interest is in bona fide dispute; (5) such  
3 entity could be compelled, in a legal or equitable proceeding, to accept a money  
4 satisfaction of such interest. Gewalt is aware of two consensual liens secured by the  
5 real property as well as property taxes. She estimates that after satisfaction of the  
6 consensual liens, payment of property taxes and costs of sale the proposed sale will net  
7 approximately \$180,000 for the estate.

8 11 U.S.C. §363(f) (2) provides that a trustee (or debtor in possession acting as  
9 trustee) may sell property free and clear of any interest in such property of an entity  
10 other than the estate if such entity consents. Debtor believes that all liens secured by  
11 the property will be paid in full with a dividend to the estate of approximately  
12 \$180,000. As a consequence, the motion of the Debtor under Section 363(f) is proper,  
13 and the motion should be granted in its entirety.

#### 14 **BASIS FOR APPROVAL OF BROKER'S COMPENSATION**

15 11 U.S.C. 330(a)(1)(A) authorizes the court to award to a professional person  
16 "reasonable compensation for actual, necessary services." The Debtor requests that  
17 the Court approve the Broker's commission in the amount of \$41,300 (5% of the gross  
18 sale price), or the appropriate commission resulting from a successful overbid. The  
19 contractual commission fee charged is a reduction from the six percent originally  
20 agreed to and is a reasonable charge for similar work performed in similar matters, and  
21 the compensation sought by the Broker is not inconsistent with that authorized in  
22 similar cases. Broker was employed by Debtor prior to the filing of the present case.

#### 23 **BASIS FOR WAIVER OF FRBP 6004(h)**

24 Debtor does not anticipate any opposition to this motion. The proposed sale  
25 terms require a very prompt closing and generate funds adequate to pay secured claims  
26 as generate a significant surplus for the estate. Further, the Buyer desires immediate  
27 ownership and was prepared to close within days of the original offer. Buyer indicates  
28 that her offer presupposed a very prompt closing. Accordingly, Debtor requests that

1 the 14 day stay period imposed by Federal Rule of Bankruptcy Procedure 6004(h) be  
2 waived so that the sale can move forward immediately upon entry of the Court's order  
3 approving sale.

4 **WHEREFORE**, Debtor requests an order:

5 A. Authorizing the conclusion of the proposed sale.

6 B. Authorizing the Debtor to execute any and all instruments, documents and  
7 agreements necessary to and for the sale of the Assets of the Debtor and to take any  
8 and all actions necessary or appropriate to perform, undertake, consummate,  
9 implement and close the sale, transfer and conveyance of the Assets, including,  
10 without limitation, executing all additional instruments, documents and agreements as  
11 may be necessary, expedient or proper to complete any and all confirmations,  
12 acknowledgments, conveyances, transfers, sales, grants, assignments, and/or  
13 subordinations;

14 C. That the Bankruptcy Court shall retain jurisdiction and power of any action,  
15 proceeding, dispute and/or matter arising under, arising out of, or related to or  
16 encompassed by this motion or the sale that is the subject of this motion.

17 D. Approving the payments of realtor commissions and ordinary and  
18 customary costs of sale;

19 E. Waiver of the stay imposed by Federal Rule of Bankruptcy Procedure  
20 6004(h) and;

21 E. For any and all such further relief as the Court deems just and proper.

22  
23 Dated: March 4, 2021

**REYNOLDS LAW CORPORATION**

24 /s/ Stephen M. Reynolds  
25 Stephen M. Reynolds  
26 Attorneys for Victoria Gewalt  
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